RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1001225 SEPARATION DATE: 20061115

BOARD DATE: 20110728

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, LCpl/E-3 (7000, Firefighter Student), medically separated for herniated disc L5-S1*.* The CI was participating in firefighter training carrying a person on his back while running when he had acute onset of low back pain (LBP) which within days radiated down the posterior aspect of the right thigh into the calf. In April 2006 the CI was placed on limited duty (LIMDU) for six months. In May 2006*,* the CI was given a U2 profile which stated that the CI was not physically qualified for firefighting training. Despite extensive physical therapy (PT), two epidural steroidal injections, narcotic medications, muscle relaxants and a six month LIMDU, the CI was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards and was referred to a Medical Evaluation Board (MEB). The MEB forwarded “Displacement of Lumbar Intervertebral Disc without Myelopathy” to the Physical Evaluation Board (PEB) on NAVMED 6100/1. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The informal PEB adjudicated “Herniated Disc L5-S1” condition as unfitting, rated 20%, with the disability code of 5237 with probable application of the SECNAVINST 1850.4E and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and thus was medically separated with a 20% combined disability rating.

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CI CONTENTION: The CI states, “I was a civilian firefighter before I joined the Marine Corps. My injury was sustained while training to be a crash firefighter (7051). Because of this injury, I am no longer able to be a firefighter in the Marines or as a civilian. I would like to add that my injury remains to haunt me even in normal day to day activities. It hurts just to get in my truck. I am 26 y/o and have to live with having a bad back for the rest of my life. I would like to add that my injury wasn’t even sustained while training; it was sustained while being hazed for bad grades of a Marine that was in a different class. I was finished with training and was scheduled to leave for 29 Palms in 3 days.” He adds additional remarks in section 15, but elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20060731** | **VA (4 Mo. After Separation) – All Effective Date 20061006** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Herniated Disc | 5237 | 20% | Degenerative Disc Disease L5-S1 with right radiculopathy | 5237 | 20% | 20070326 |
| ↓No Additional MEB/PEB Entries↓ | Not Service Connected x 1 | 20070326 |
| **Combined: 20%** | **Combined: 20%** |

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ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred back condition continues to burden him. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. This Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation.

Back Condition. There were two goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below.

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| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT~ 5 mos pre sep*(20060621)*  | MEB ~ 4 Mo. Pre-Sep*(20060714)* | VA C&P ~ 4 Mo. After-Sep*(20070326)* |
| Flex (0-90) | 45⁰ | *See PT exam 20060621* | 45⁰ |
| Ext (0-30) | 15⁰ | 30⁰ |
| R Lat Flex (0-30) | 45⁰ (30⁰) | 30⁰ |
| L Lat Flex 0-30) | 45⁰ (30⁰) | 30⁰ |
| R Rotation (0-30) | 45⁰ (30⁰) | 30⁰ |
| L Rotation (0-30) | 45⁰ (30⁰) | 30⁰ |
| COMBINED (240) | 180⁰ | 195⁰ |
| Comment | Increased lordosis; pain on ROM 7/10; +TTP over L4-S1 along spinous processes; no spasm; +SLR right leg | Increased lordosis; +TTP over L4-S1 along spinous processes; pain elicited by motion; +SLR right leg  | Exam showed flexion: pain started at 15⁰ and ended at 45⁰; extension: no pain noted; no spasm; negative Waddell’s signs |
| §4.71a Rating | 20% | 20% *(MEB 20%)* | 20% (*VA 20%)* |

An MRI done in January 2006 indicated degenerative disc disease at L5-S1 with disc desiccation and with a 4 mm central and right posterolateral broad-based disc protrusion causing posterior displacement of the right S1 nerve root, and mild right sided foraminal narrowing at L5-S1. The CI complained of LBP being 7/10 with 10 being the worst. In January 2006, the neurosurgeon noted that the sensory exam revealed a very slight decreased light touch and pin prick along the medial malleolus. The PT ROM limitations were due to pain, functional and mechanical limitation of the joints. The MEB exam four months prior to separation indicated that the CI had LBP pain characterized as significant with radiation of pain down to his right foot. The examiner indicated that although the CI had received two epidural steroid injections, he did not receive any benefit from this treatment and was unable to return to training due to his chronic LBP. On physical exam, there were findings of increased lordosis, TTP over L4-S1 along spinous processes, pain elicited by ROM and the SLR test was positive with right leg raised however there was no evidence of motor or sensory deficit. The examiner stated that despite the CI having undergone extensive rest, duty limitations, PT and epidural steroid injections, he was still unable to return to training status. The examiner consulted with the CI’s treating neurosurgeon who opined that the CI was not a surgical candidate and should continue with non-surgical therapies. Motor strength was evaluated as normal although prior evaluations were noted to have documented slight decreased strength in back flexion and extension.

The VA Compensation & Pension examination four months after separation documented that the CI had stiffness, limited motion, LBP, right lower extremity numbness and paresthesias, pain radiation to lower extremities. The CI had functional limitations of lifting and carrying with pain. Physical exam findings were pain limited ROM and positive straight leg raise, however there were no sensory or motor deficits noted.

The CI’s pain symptoms and pain radiculopathy is considered under the General rating Formula for Diseases of the Spine “with or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease”. Although the CI had a sensory radiculopathy with pain, there was no significant motor component to the radiculopathy. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The sensory component in this case had no functional implications. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

All exams proximate to separation and post separation met the 20% rating criteria for “forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.” The PEB and the VA chose the same disability code 5237 Lumbosacral or cervical strain and rated at 20%. The Board considered coding 5243, Intervertebral Disc Syndrome; however there were no periods of incapacitation. After due deliberation, there is not reasonable doubt in the CI’s favor, therefore to justify a Board recommendation for other that the 20% rating assigned by the PEB for the CI’s Herniated Disc condition or the addition of any ratable radiculopathy.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised.

In the matter of the Herniated Disc condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication.

In the matter of the right lower extremity radiculopathy condition or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Herniated Disc | 5237 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101108, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 25 Aug 11

 I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the PDBR Mr. XXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Assistant General Counsel

 (Manpower & Reserve Affairs)